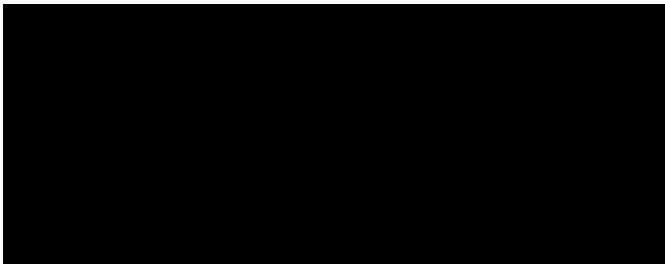


9 May 2019



Official Information Act Request #18.195 - Debitsuccess Limited

1. We refer to your request received on 15 April 2019 for any documentation associated with the Commerce Commission's (Commission) audit of Debitsuccess Limited's (Debitsuccess) default fees.
2. We have treated this as a request for information under the Official Information Act 1982 (OIA).

Our Response

3. We have decided to grant your request.
4. The Commission reviewed Debitsuccess' default fee in 2015/2016; we did not conclude that this fee was appropriate.
5. The Commission reviewed Debitsuccess' standard form consumer contract in 2015/2016 as part of the Commission's review for unfair contract terms in the Gym industry. As part of this process, the Commission looked at Debitsuccess' debt collection clauses (including the imposition of a \$50 default fee).
6. The Commission did not reach a view on the fairness of the default fee at that time, because the reasonableness of fees is covered by specific provisions of the Credit Contracts and Consumer Finance Act 2003 (CCCFA) and it was anticipated the law in this area was to be clarified shortly after by a Supreme Court decision in the MTF Sportzone case.¹
7. We advised Debitsuccess that if a fee is deemed not "reasonable" under the CCCFA, it is likely to constitute a penalty under the unfair contract terms provisions of the Fair Trading Act 1986, if there is no legitimate reason for including the term.

¹ *Sportzone Motorcycles Limited (In Liquidation) and Motor Trade Finances Ltd v Commerce Commission* [2016] NZSC 53

8. The Commission reserved the right to revisit these issues at a later date if it considered it was necessary.
9. The Commission will be publishing this response to your OIA request on its website.² Your personal details will be redacted from the published response.
10. If you have any questions about this request, please do not hesitate to contact us at uia@comcom.govt.nz.

Yours sincerely,

Mary Sheppard
OIA Coordinator

² <https://comcom.govt.nz/about-us/requesting-official-information/oia-register>